

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

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CC Docket No. 96-262

Access Charge Reform

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TELCO COMMUNICATIONS GROUP, INC.'S
PETITION FOR RECONSIDERATION

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**TELCO COMMUNICATIONS GROUP, INC.'S
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Telco Communications Group, Inc.¹ on behalf of its Dial & Save and Long Distance Wholesale Club operating subsidiaries (together "Telco"), by undersigned counsel and pursuant to Section 1.429 of the Federal Communications Commission's ("Commission") rules, submit this Petition for Reconsideration of the Commission's First Report and Order,² released May 16, 1997, and published on June 11, 1997 in the Federal Register, in which the Commission adopted rules to reform interstate access charges.

I. Introduction and Summary

Telco is a rapidly growing, switch-based provider of long distance telecommunications products and services, targeting residential, commercial and carrier customers. Telco has been

¹On June 6, 1997, Telco Communications Group, Inc. and Excel Communications, Inc. issued a press release which announced their intent to merge. Both Telco Communications Group, Inc. and Excel Communications, Inc. will survive as wholly-owned subsidiaries of a new holding company.

²*Access Charge Reform*, CC Docket No. 96-262, First Report and Order, FCC 97-158 (rel. May 16, 1997) ("Access Reform Order").

providing long distance services for approximately three years and is one of the nation's ten largest long distance companies. Telco is authorized to provide long distance telecommunications services nationwide, either pursuant to certification, registration or tariff requirements, or on an unregulated basis.

Telco is actively seeking to enter the local exchange market. Telco is currently authorized to provide competitive local exchange services in approximately 21 states and is seeking to obtain authority to provide competitive local exchange services in the remaining states. As an interexchange carrier and a new entrant in the local exchange market, Telco is keenly interested in the rules adopted in the Commission's Access Reform Order.

Telco has actively participated in the Commission's Access Reform proceeding by filing Comments, Reply Comments, and an Opposition to Southwestern Bell's, Pacific Bell's, and Nevada Bell's Motion to Stay certain aspects of the Access Reform Order. In its Comments, Telco urged the Commission to adopt a prescriptive approach to access charge reform and reduce access charges to cost-based rates as soon as possible. Telco asked the Commission to base access charges on the same pricing standards adopted for interconnection, unbundled network elements, and collocation. Telco also asked the Commission to adopt a pricing structure that would recover some portion of tandem switching costs from direct-trunked transport customers in recognition of the fact that common transport and tandem switching capacity must be sized to serve those customers during peak traffic periods.

Telco files this Petition for Reconsideration to urge the Commission to reconsider one aspect of its decision that imposes undue costs on so-called "small" interexchange carriers ("IXCs"). The Commission dealt these carriers a double blow when it both refused to allocate a portion of tandem switching costs to direct-trunked transport customers that utilize tandem-switched transport for their overflow traffic,³ and also eliminated the unitary rate structure for tandem-switched transport.⁴ Although the impact of the transport rate restructuring is difficult to quantify, it is generally expected to substantially increase costs for IXCs that primarily rely on tandem-switched transport for interstate access. Rather than promoting "full and fair" competition in the interexchange market, imposition of the three-part rate structure effectively penalizes these "small" IXCs, which include Telco and virtually all other IXCs except AT&T, for their lack of an historic relationship with the incumbent LECs and their smaller volumes of traffic that do not consistently justify direct trunking.

In its Petition for Reconsideration, Telco shows that the mandatory three-part rate structure does not meet the Commission's stated goals of moving tandem-switched transport prices closer to costs and encouraging competition in the interstate access market. Evidence that incumbent local

³Telco notes that at least one incumbent local exchange carrier, Pacific Telesis Group ("PacTel"), agreed that the Commission should impose a "standby" charge in recognition of the fact that the tandem stands ready to serve direct-trunked transport customers during peak periods of traffic. Comments of PacTel at pg. 70.

⁴Telco notes that the Commission's Access Reform Order imposes a number of other new costs on tandem-switched transport customers that previously were not borne exclusively by these carriers. Some of these changes, such as reallocating the costs included in the Transport Interconnection Charge, were mandated by the D.C. Circuit Court of Appeals. Others, such as the switch from the presumed 9,000 minutes of use to actual minutes of use, arguably better reflects the incumbent LECs' costs incurred.

exchange carriers' ("LECs") transport costs are not distance sensitive and that incumbent LECs actually route both dedicated and tandem-switched transport over the same facilities supports retention of the unitary rate structure and further investigation into the disconnect between transport distances and the costs of providing transport. If the Commission truly wishes to accomplish its stated goals, it should retain the unitary rate structure and require incumbent LECs to price tandem-switched transport on the same cost basis as they price the functionally-equivalent unbundled network elements of tandem switching and local transport.

If, however, the Commission upholds its decision to eliminate the unitary rate structure, a decision with which Telco strongly disagrees, it must remove the obstacles that will inhibit the ability of IXC's to restructure their transport architecture. First, the Commission must require incumbent LECs to waive the non-recurring charges associated with establishing Points of Presence ("POPs") so that IXC's may relocate their POPs at or near the incumbent LECs' tandems. Second, because incumbent LECs control the pricing and other information needed to estimate the impact of the transport restructure on IXC's, the Commission should require incumbent LECs to provide such estimates.

II. RECORD EVIDENCE THAT LECs' TRANSPORT COSTS ARE NOT DISTANCE-SENSITIVE SUPPORTS RETENTION OF THE UNITARY RATE STRUCTURE

In adopting the three-part rate structure, the Commission actually took a step in the wrong direction, away from cost-based pricing. Instead of moving tandem-switched transport pricing closer to costs, the Commission has attempted to perpetuate a pricing scheme that does not accurately reflect the manner in which LECs' tandem-switched transport costs are actually incurred. The

Commission focused on two main “shortcomings” of the unitary rate structure. According to the Commission, the first shortcoming is the disconnect between the non-traffic sensitive (“NTS”) nature of the costs of providing the serving wire center to tandem circuit and the traffic-sensitive, per minute of use, pricing of the unitary rate structure. The second shortcoming is that tandem-switched transport customers *require* the LEC to route their traffic over two legs or circuits (serving wire center to tandem circuit and tandem to end office circuit), yet customers are only charged for a single circuit measured between the serving wire center and the end office.⁵ Thus, the Commission concludes, two charges, one flat-rated and the other usage-sensitive, better reflect the costs incurred to transport that traffic.

However, due to the incumbent LECs’ use of SONET rings and hub and spoke architecture, both tandem-switched and direct-trunked transport customers’ calls are in fact often transported over identical routes.⁶ The only difference is that the circuits utilized for direct-trunked transport customers are all dedicated while at least one of the circuits utilized for tandem-switched transport

⁵Access Reform Order at ¶¶182, 186, and 189.

⁶*See, e.g.*, Comments of CompTel at pp. 14, 25 (record shows that LECs use same facilities interchangeably to furnish all switched transport services; all interoffice transport facilities are shared with dedicated and common circuits using identical routing options); Comments of WorldCom at pp. 50-51 (incumbent LECs utilize SONET ring architecture to transport both tandem-switched and direct-trunked transport traffic). The Commission recognized that incumbent LECs may indeed transport both customers’ traffic over the same route. However, it noted that in the case of direct-trunked transport customers, the incumbent LEC routes the traffic through the tandem at the LEC’s option. Access Reform Order at ¶ 186.

customers is shared.⁷ The incumbent LECs' use of SONET rings makes it difficult if not impossible to predict the actual routing of transport traffic.⁸ The Commission repeatedly emphasized that "the precise routing of the traffic to the tandem, including the direction it may take around a SONET ring, is irrelevant to the rate structure because IXC's purchase transport under the three-part rate structure ***based on airline mileage to the tandem.***"⁹ However, the Commission also recognized that distance may no longer be an accurate measure of the costs LECs incur to provide transport.¹⁰ If distance is not an accurate measure of incumbent LECs' costs, basing tandem-switched transport prices on two distinct distance measurements, instead of one, actually ***increases the disconnect between the costs incurred and price charged to provide tandem-switched transport.*** Furthermore, as Telco explains below, creating rates for two circuits, neither of which are cost-based, does not achieve the goal of moving rates toward costs.

Finally, eliminating the unitary rate option now and allowing incumbent LECs to reintroduce it at some future date, as "pricing flexibility" is granted where competition develops,¹¹ is inefficient

⁷Access Reform Order at ¶189. Telco notes that, putting distance measurements and the number of circuits or legs aside, tandem-switched transport customers do compensate incumbent LECs for use of their tandem by paying tandem switching charges that direct-trunked transport customers do not pay.

⁸Comments of CompTel at pg. 26 (cannot structure direct-trunked or tandem-switched transport to reflect the actual physical routing of calls).

⁹Access Reform Order at ¶189 (emphasis added).

¹⁰Access Reform Order at ¶154, 190. *See also*, Reply Comments of US West at pg. 30; Comments of Sprint at pp. 21, 24.

¹¹Access Reform Order at ¶193.

and contradictory.¹² The fundamental premise of the Commission's reliance on a market-based approach to access charge reform is that competition will drive incumbent LECs' access charges to the cost-based rates that would prevail in a competitive market.¹³ If the unitary rate structure is the flexible pricing that incumbent LECs plan to utilize to respond to competition then, under the Commission's market-based approach, it is also the cost-based rate that would prevail in a competitive market and therefore should be retained.

III. IF THE COMMISSION WANTS TO MOVE TANDEM-SWITCHED TRANSPORT RATES CLOSER TO COST, IT SHOULD REQUIRE PRICING BASED ON COSTS, NOT PRICES THAT MERELY REFLECT THE MANNER IN WHICH COSTS ARE INCURRED

For both economic and policy reasons, the components of tandem-switched transport must be priced on the same cost basis as the functionally-equivalent unbundled network elements of tandem switching and local transport. LECs use the same facilities interchangeably to furnish all interoffice transport services and all tandem switched services, whether those services are utilized for access or for interconnection.¹⁴ As the Commission recognized, "common transport circuits may

¹²Although incumbent LECs "virtually unanimously favor the three-part rate structure as most consistent with principles of cost-causation," Access Reform Order at ¶193, they also espouse other arguments that directly contradict their supposed support of the three-part rate structure. *See, e.g.,* Comments of USTA at pp. 27-28 (recommending substantial deregulation of tandem switching and transport services as soon as a state-approved interconnection agreement or a Statement of Generally Available Terms and Conditions becomes effective).

¹³*See, e.g.,* Access Reform Order at ¶7.

¹⁴Comments of AT&T at pg. 6 (distinction between interexchange access and transport and termination of local traffic is totally artificial); Comments of Southwestern Bell at pg. 4 (interconnection pricing rules have had the practical effect of forcing LECs to price access at the

be used to transmit the individual calls of many IXC's and *even the incumbent LEC itself.*"¹⁵ The Telecommunications Act of 1996 requires incumbent LECs to establish prices based on cost for the unbundled network elements of local transport and tandem switching.¹⁶ Although the three-part rate structure may "unbundle reasonably segregable components of incumbent LEC transport services and price them *in the manner* in which costs are incurred,"¹⁷ it does nothing to require the incumbent LECs to base tandem-switched transport pricing on costs.

By refusing to require LECs to price tandem-switched transport on a cost basis, the Commission sets up a system of pricing that sends perverse economic signals to carriers purchasing interstate access. If unbundled network elements are truly made available at cost-based prices, competitive LECs, including Telco, will have the opportunity to purchase unbundled local transport and switching and combine those elements with their own facilities to provide interstate access and competitive transport services to IXC's. However, so long as incumbent LECs are allowed to price

level of unbundled network elements); Reply Comments of Telco at pg. 7 (unbundled network elements are substitutes for access service); Comments of US West at pg. 20 (recognizing that interstate access and interconnection, while not exactly the same, are logical substitutes for each other); Comments of WorldCom at pg. 52 (tandem-switched transport, local transport, and the local transport unbundled network element are functionally similar and should be priced on the same basis).

¹⁵Access Reform Order at ¶150 (emphasis added).

¹⁶Telco agrees with the Commission that the cost-based pricing requirements of the 1996 Act require the use of forward-looking costs. However, since the Eighth Circuit has stayed the Commission's interpretation of the cost-based pricing requirement, Telco uses the generic phrase "cost-based" as opposed to "forward-looking costs."

¹⁷Access Reform Order at ¶179.

the functionally-equivalent service of tandem-switched transport on a different basis, the regulatory regime will be promoting one interstate access provider over another. If the Commission truly wishes to encourage competition in the provision of interstate access, the regulatory regime must be competitively neutral.

IV. IF THE COMMISSION PERSISTS IN ELIMINATING THE UNITARY RATE STRUCTURE, IXCs MUST BE GIVEN MORE FLEXIBILITY TO RESTRUCTURE THEIR TRANSPORT ARCHITECTURE AND MORE INFORMATION TO PREPARE FOR THE CHANGE

The Commission took certain steps to enable tandem-switched transport customers to adjust their transport architecture to provide service more efficiently under the three-part rate structure. The Commission implicitly recognized the new and different economic signals of the mandatory three-part rate structure when it ordered LECs to waive non-recurring charges for converting trunks from tandem-switched to direct-trunked transport.¹⁸ If, contrary to Telco's recommendation, the Commission upholds its decision to eliminate the unitary rate structure, it should take further steps to remove the obstacles that will prevent IXCs from restructuring their transport architecture based on the economics of the new three-part rate structure.

First, the Commission should require incumbent LECs to waive the non-recurring charges associated with establishing POPs at or near their tandems. In its Access Reform Order, the Commission notes that an efficiently operated IXC will choose to establish its POP by the incumbent

¹⁸Access Reform Order at ¶176 (three-part rate structure may cause some tandem-switched transport customers to increase their use of direct-trunked transport).

LECs' tandems.¹⁹ This assumption ignores the fact that most IXC's established their POPs under the very different economic incentives created by the interim transport structure.²⁰ The interim transport structure did not incent an efficiently operated IXC to locate its POP close to the incumbent LECs' tandems. In practice, determinations regarding where to place POPs have been based primarily on factors such as where the IXC's customer base is located, whether or not the IXC has existing operations in a particular location, space availability and price. It would be a tremendously expensive undertaking for Telco, or its underlying carrier, to relocate all of the POPs that are not currently served by an incumbent LEC's tandem switch. Therefore, if the Commission wishes to encourage efficient transport architecture, it should order incumbent LECs to waive non-recurring charges for establishing POPs at or near their tandems.

The second step the Commission should take to allow IXC's to adjust to the three-part rate structure involves access to information. Incumbent LECs hold most, if not all, of the information necessary to estimate what charges an IXC will incur for tandem-switched transport under the three-part rate structure. In adopting the interim transport rate structure, the Commission recognized this fact and required the Bell Operating Companies ("BOCs") and GTE to (1) estimate the impact of the rate structure change on three classes of IXC's²¹ and (2) provide IXC's with shadow bills that

¹⁹Access Reform Order at ¶187

²⁰The Commission itself noted that the interim transport structure did not encourage efficient transport architecture. Access Reform Order at 187.

²¹Those estimates originally indicated that in the move from the "equal charge rule" to the interim rate structure AT&T would face rate *decreases* of .6%, MCI and Sprint would face rate *increases* of .9%, and small IXC's would face rate *increases* of 1.8%. *Transport Rate Structure and*

compared charges under the old rate structure to an estimate of the charges the IXC would be assessed under the new interim rate structure.²² Although any estimates prepared by incumbent LECs will likely underestimate the adverse impact of the rate structure change on IXCs, because incumbent LECs are the only carriers in a position to evaluate the impact of the three-part rate structure, the Commission should require them to provide those estimates again.

Conclusion

Many of the actions taken in the Commission's Access Reform Order will result in a substantial increase in the costs borne by so-called small IXCs that utilize tandem-switched transport. While some of these actions were mandated by the D.C. Circuit Court of Appeals and/or arguably reflect proper cost causing principles, the Commission's decision to eliminate the unitary rate structure was not mandated, does not accurately reflect the costs incumbent LECs incur to provide tandem-switched transport, and does not promote competition in the interstate access

Pricing, Third Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 3030, 3044 at Table 1 (1994). However, the actual impact of the restructuring on small IXCs (all IXCs except AT&T, MCI and Sprint) was greater than originally predicted (2.2% increase in the first three quarters of 1994). *Id.*

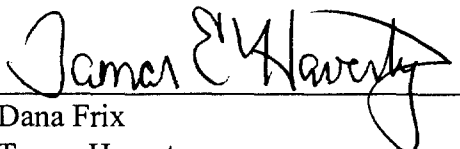
²²*Transport Rate Structure and Pricing*, First Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 5370, 5381 at ¶¶65-66 (1993).

market. For these reasons, the Commission should reconsider this aspect of its Access Reform Order and retain the unitary rate structure.

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I, Wendy Mills, hereby certify that on the 11th day of July, 1997, a copy of the foregoing
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